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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MARIA V., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B158462 (Super. Ct. No. J987276)

ORIGINAL PROCEEDING; petition for extraordinary writ. D. Zeke Zeidler, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Writ denied.

Donna Wright Bernstein for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Pamela S. Landeros, Deputy County Counsel, for Real Party in Interest.

Maria V. is the mother of nine children who had been declared to be dependent children in the current proceeding. On May 1, 2002, the juvenile court presided over a hearing at which, inter alia, the court reviewed the permanent plans for four of Maria's children, J.C.V. (born Oct. 1985), Denny L. (born Dec. 1986), J.M.L. (born Mar. 1989) and X.L. (born July 1990). (Welf. & Inst. Code, § 366.3.)[1] The court found that these children could not be returned to Maria, continued the permanent plan of long-term foster care, and scheduled a hearing to select and implement permanent plans of either guardianship or adoption. Maria now petitions for extraordinary relief from the May 1, 2002 order of the juvenile court setting a hearing to select and implement permanent plans for J.C., Denny, J.M. and X. We deny Maria's petition.

BACKGROUND

The current case commenced in August 1999 when respondent Department of Children and Family Services filed a petition alleging that Maria and the baby that she had just given birth to, Guadalupe O., both tested positive for cocaine, and that Maria's five oldest children had previously been declared dependents because of Maria's abuse of drugs. The court detained all nine of Maria's children, returned the two youngest, Guadalupe and Monica O., to the care of their father, Armando O., and placed the other children in shelter care. In October 1999, the court sustained the petition.

In April 2000, the department filed a subsequent petition alleging that Maria had used inappropriate measures to discipline her children and that she singled out J.M. for additional punishment. Maria admitted that she did not love J.M. as much as she loved her other children. In June 2000, the court sustained the subsequent petition.

Maria was permitted to move in with Armando and their daughters, Monica and Guadalupe, in the summer of 2000. In December 2000, the court ordered that Maria's oldest child, Jessica V., be placed with Maria, and in January 2001, the court ordered that Maria's third and fourth youngest children, Andrea N. and Daniel N., be placed with Maria.

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[1] All statutory references are to the Welfare and Institutions Code.

Neither J.C., Denny, nor J.M. wanted to return to Maria's home and each indicated that he wanted to remain with his respective foster parents: J.C. with his foster mother, Eustolia G., and Denny and J.M. with their foster parents, Laura and Ramon D. J.C. and Denny began participating in family visits with Maria and her other children, but J.M. had refused to visit Maria. J.C., Denny and J.M. were bonded to each other and their foster parents made sure that the boys kept in regular contact with each other apart from the family visits. X., who had been diagnosed as having "Moderate Mental Retardation" and suffered seizures, had been placed with foster parents, James and Phyllis R. She indicated that she wanted to live with them and with her mother.

On February 21, 2001, the court terminated Maria's reunification services as to J.C., Denny, J.M., and X., and ordered for these children permanent plans of long-term foster care.

Shortly thereafter, around February 26, 2001, the department filed a subsequent petition alleging that Maria had failed to protect Monica and Andrea from physical abuse by Armando. The court detained and removed Jessica, Andrea, Daniel, Monica and Guadalupe from Maria's home and placed them in shelter care. On May 2, 2001, the court found the allegations in the subsequent petition to be true. In October 2001, after several months of reunification services, the court ordered that Jessica remain in shelter care but that Andrea, Daniel, Monica and Guadalupe be placed with Maria and Armando.

The court held hearings to review the permanent plans of J.C., Denny, J.M. and X. on July 10, 2001, January 8, 2002, and January 31, 2002. At each hearing, the court continued the minors in long-term foster care and ordered the department to finalize permanent plans. In July 2001, the caretakers of Denny, J.M., and X. indicated that they did not want to adopt or be named legal guardians of these children. J.C.'s caretaker expressed an interest in being named his legal guardian, but J.C. expressed ambivalence about being returned to Maria.

By May 2002, the respective foster parents of J.C., Denny, J.M. and X. indicated that they were interested in being the minors' legal guardians. Also, J.C. changed his mind and said that he wanted to live with his foster mother. Maria stated that she was not opposed to

plans of legal guardianship for J.C., Denny and J.M., but stated that she wanted X. to be returned to her custody. Maria also had reported that she felt overwhelmed when the older children visited because they had different needs and she could not relate very well to them. She also expressed concern that their presence might interfere with the family's present stability. And although Maria adamantly opposed a plan of legal guardianship for X., she admitted that she might not be capable of providing the constant supervision that X. required.

But at the May 1, 2002 hearing to review the permanent plans of J.C., Denny, J.M. and X., Maria, through her court-appointed counsel, "object[ed]" to the court setting a hearing to select and implement a permanent plan. She argued that the department should have filed a petition for modification pursuant to section 388 explaining why there should be a change in the permanent plans. She also argued that her relationships with these children were strong and there was no change in circumstances that warranted modification of the permanent plans. The court found that the minors' caretakers had recently indicated a willingness to become their legal guardians and overruled Maria's objection. The court then scheduled a hearing pursuant to section 366.26 to select a permanent plan of either adoption or legal guardianship.[2]

DISCUSSION

Maria contends that the court abused its discretion in setting a hearing pursuant to section 366.26 to select and implement permanent plans for J.C., Denny, J.M., and X. She argues that there was insufficient evidence showing a change in circumstances that warranted such a hearing. We disagree.

Section 366.3, subdivision (d) requires six-month hearings to review the status of a child whose permanent plan was selected as long-term foster care. The six-month review hearings may be conducted by either the juvenile court or the local adoption agency.

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[2] At the May 1, 2002 hearing, the court also reviewed the permanent plan of long-term foster care for Jessica and reviewed the placements of Andrea, Daniel, Monica and Guadalupe with her. The court ordered that Jessica remain in long-term foster care and terminated jurisdiction over the other four children.

"At the review held pursuant to [section 366.3,] subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court *shall* order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26." (§ 366.3, subd. (g), italics added.)

A juvenile court presiding over a hearing held pursuant to section 366.3 "may order a new permanent plan under section 366.26 at any subsequent hearing" if the court determines that "circumstances have changed since the permanent plan was ordered." (Cal. Rules of Court, rule 1466(b); see *San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882, 887–890.)

Here, the respective caretakers of J.C., Denny, J.M. and X. each represented that they were interested in being named legal guardians of the children under their care. Also, J.C. indicated that he was no longer interested in returning to Maria's home. These changed circumstances permitted the court to schedule a section 366.26 hearing. (Cal. Rules of Court, rule 1466(b).) Further, section 366.3, subdivision (g) required the court to set a section 366.26 hearing unless it found that it was not in the best interests of the children. Given that the caretakers of these children were interested in becoming their legal guardians, it would have been error for the court to have foregone scheduling a section

366.26 hearing and instead to have chosen the least stable and the least permanent plan of long-term foster care for the children. (See *In re John F*. (1994) 27 Cal.App.4th 1365, 1377; section 396 [stating Legislative policy that a "permanent living situation such as adoption or guardianship is more suitable to a child's well-being than is foster care"].)

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

ORTEGA, Acting P. J.

VOGEL (MIRIAM A.), J.